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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 388

O/Y WIPU, as owner of the Finnish steamer WILJA,

Petitioner,

against

LOUIS LOUIS DREYFUS, JEAN LOUIS DREYFUS, PIERRE LOUIS DREYFUS and FRANCOIS LOUIS DREYFUS, co-partners, doing business under the firm name and style of LOUIS DREYFUS & Co.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioner.

HERBERT M. STAFF,
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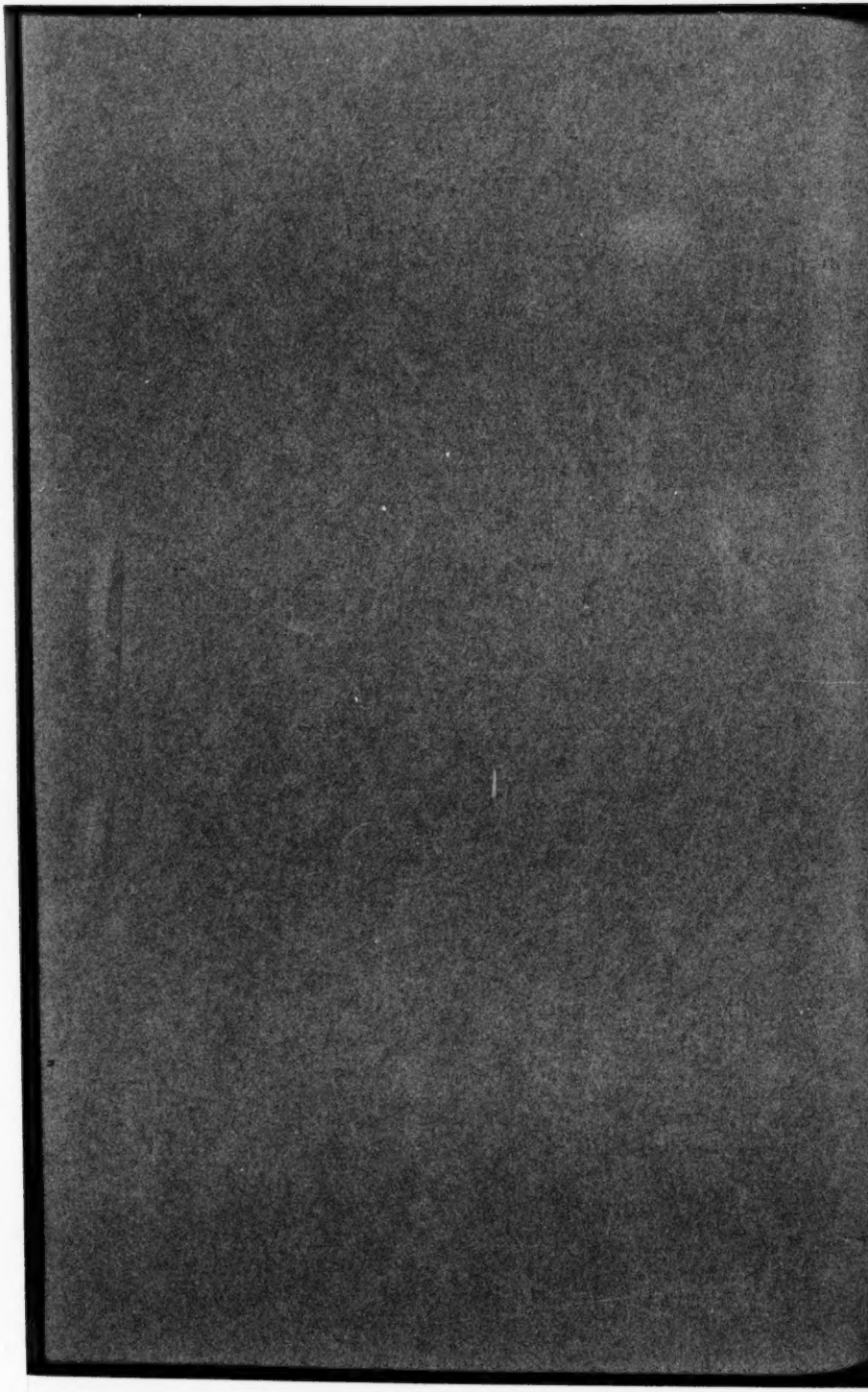
of Counsel.



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O/Y WIPU, as owner of the Finnish steamer WILJA,
Petitioner,

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LOUIS LOUIS DREYFUS, JEAN LOUIS DREYFUS, PIERRE LOUIS DREYFUS and FRANCOIS LOUIS DREYFUS, co-partners, doing business under the firm name and style of LOUIS DREYFUS & Co.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, O/Y Wipu, a corporation, respectfully shows:

Summary Statement of the Matters Involved.

I. Your petitioner is a Finnish corporation which, at all material times, was the owner of the Finnish steamer *Wilja*. It has offices for the transaction of business in Finland (R. p. 20), but not in the United States (R. p. 33).

II. The respondents are citizens and residents of France and are co-partners, doing business under the firm name and style of Louis Dreyfus & Co., with their head office at Paris, France, and with branch offices located generally throughout the world. They have a branch office in the Southern, but not in the Eastern, District of New York (R. p. 20).

III. On August 18, 1939, petitioner and respondents entered into a charter-party (reproduced R. p. 28) of the petitioner's steamship *Wilja* for the carriage of grain from St. Lawrence River loading points in the Dominion of Canada to various points in the British Isles and/or the continental ports of Antwerp or Rotterdam. The charter-party was signed and dated at London, England; the petitioner acted through a citizen and resident of Finland, one Antti Wihuri, managing owner of the vessel, who, in turn, was represented by the London chartering firm of H. Clarkson & Co., Ltd. The respondents acted through their London branch office. The charter-party provided for freight to be paid in British sterling in England, and also contained the following clause:

> "16. Canadian Water Carriage of Goods Act, 1936 * * * and Arbitration Clause No. 39 of the Centrocon C/Party to apply to this charter-party."

Arbitration clause No. 39 of Centrocon charter-party, incorporated by the above reference, reads (R. p. 33):

> "All disputes from time to time arising out of this contract shall, unless the parties agree forthwith on a single arbitrator, be referred to final arbitrament of two arbitrators carrying on business in London, who shall be members of the Baltime and engaged in the shipping and/or grain trades * * *"

IV. On November 18, 1939, an addendum to the said charter-party (printed R. p. 29) was agreed upon between the London representatives of owner and charterer. The addendum, like the charter-party, was dated and signed at London. In brief, the addendum (a) provided for freight at

approximately twice the rate provided in the original charter-party (and at approximately one-half the then current market rate); (b) limited the ports of discharge to Antwerp and/or Rotterdam; and (c) designated lay days and canceling dates as November 20, 1939, and November 28, 1939, respectively. The addendum further specifically provided: "All other conditions and exceptions of charter-party remaining unaltered."

V. On Saturday, November 18, 1939, respondents' New York office instructed the master of the *Wilja* to proceed from New York (where she then was) to Montreal and there load a full cargo of soya beans (R. p. 39).

VI. On Monday, November 20, 1939, in accordance with charterer's directions, the *Wilja* sailed from New York for Montreal (R. p. 20). After departing from New York, however, she sustained serious damage to her machinery, which necessitated her return to New York on the following day for repairs.

VII. The repairs required to be made consisted of renewal of the high-pressure cylinder cover and of the combination air and circulating pump, which could not be completed before December 27, 1939 (R. p. 103).

VIII. In the meantime and prior to December 15, 1939, the Port of Montreal closed for the winter, thereby making performance of the charter-party impossible before the following spring (R. p. 66). Thereupon the respondents endeavored to compel the petitioner to make an entirely different trip from that which had been contracted for, and upon the petitioner declining to modify the charter-party further, and notifying the respondents that it considered the charter-party frustrated (R. pp. 65-66), the respondents instituted the instant cause by filing their libel *in personam* in the United States District Court for the Eastern District of New York and causing the *Wilja* to be seized under writ of foreign attachment (R. p. 1).

IX. The libel (as amended) sounds in contract (R. p. 20) and seeks damages in the amount of $52,000 for the alleged wrongful neglect and refusal of petitioner to carry respondents' cargo and for alleged violation by petitioner of its alleged warranty that the *Wilja* was tight, staunch and strong and in every way fitted for the voyage agreed upon (R. p. 24).

X. Since the cause was clearly one in which the District Court had jurisdiction (a) of the subject-matter (a maritime contract), and (b) of the person of the petitioner (its property the steamship *Wilja* having been attached), but since, at the same time, the cause was one of which the District Court, in the exercise of its sound discretion, should decline to exercise its admitted jurisdiction, the petitioner applied to the District Court for appropriate relief. The Court was asked to decline jurisdiction since the controversy was one between a French co-partnership and a Finnish corporation arising out of a contract, entered into at London, to transport goods from Canada to Holland or Belgium. The clause providing for arbitration at London was referred to as indicative of the intention of the parties that English law should apply.

XI. On January 26, 1940, District Judge Moscowitz filed his opinion (R. pp. 77-79) declining jurisdiction of the cause. After reciting the undisputed facts, the District Judge concluded:

> "This Court therefore should decline jurisdiction (citing cases) and the parties should be relegated to arbitration in London."

XII. On January 29, 1940, the respondents moved the Court for reargument. In their motion papers they asked the District Judge to condition his refusal to entertain jurisdiction upon the petitioner's appearing in an arbitration proceeding in London, to be commenced by the respondents, and upon the petitioner filing equivalent security in London;

in the alternative, respondents prayed that the Court reconsider its decision to decline jurisdiction and asked it not only to retain jurisdiction, but to stay the cause "pending the hearing and determination of an arbitration proceeding in London to be commenced by the libelants herein and had in accordance with the terms of the arbitration clause provided for in the contract of charter and the entry of an order thereon in this Court" (R. p. 80).

XIII. On February 7, 1940, Judge Moscowitz filed a further opinion (R. pp. 85-86) refusing to qualify his previous decision to decline jurisdiction.

XIV. On February 27, 1940, a final decree was entered in the District Court which, after reciting the proceedings, "ORDERED, ADJUDGED AND DECREED that the libel herein be and the same hereby is dismissed with costs but not on the merits; the Court, in its discretion, declining jurisdiction" (R. p. 89).

XV. On March 4, 1940, respondents appealed to the United States Circuit Court of Appeals for the Second Circuit (R. p. 91); and on July 18, 1940, said Circuit Court of Appeals filed its opinion reversing the decree of the District Court on the ground that the District Judge had been guilty of an error of law in "relegating the parties to arbitration in London." In this connection the Circuit Court of Appeals said (R. pp. 145-146):

> "It seems clear to us that the libelants have shown that this is not a case in which the arbitration provided for in the charter-party can be regarded as a condition upon the maintenance of the cause of action * * *. Accordingly, the arbitration clause became wholly inapplicable to the case."

As authority for its decision the Court cited only *The Atlanten*, 252 U. S. 313; *Jureidini* v. *National British and Irish Millers Insurance Co., Ltd.*, [1915] A. C. 499, and *Hirji Mulji* v. *Cheong Yue Steamship Co., Ltd.*, [1926] A. C. 497.

Reasons for Granting the Writ.

XVI. It is submitted that this Court should issue its writ of certiorari and reverse the decision of the Circuit Court of Appeals and reinstate the decision of the District Court for the Eastern District of New York for the following reasons:

(a) The question involved is one of far-reaching importance in its effect upon international commercial relations. Most important contracts provide for arbitration of disputes, and this is now sanctioned and made enforceable by a Federal statute, The United States Arbitration Act: U. S. Code, Title 9; Act of February 12, 1925, C. 213; 43 Statutes at Large, 883. The contract in the case at bar was entered into in England and was subject to English law, and the parties, by their solemn agreement, referred all disputes arising out of the contract to an English tribunal. The decisions cited by the Circuit Court of Appeals do not support its conclusion, and if there be any language in the cited cases supporting the conclusion of the Circuit Court of Appeals, that language, whether or not it correctly reflected the law at the time it was written, does not correctly reflect the law to-day.

(b) The decision of the Circuit Court of Appeals constituted an unwarranted interference with the right of District Courts to determine, in the exercise of their own sound discretion, of what cases involving controversies between non-resident aliens they shall retain jurisdiction, and was not in accord with the principles laid down by this Court in the case of *Charter Shipping Co., Ltd.* v. *Bowring, Jones & Tidy,* 281 U. S. 515.

(c) In view of the prevalent present-day point of view, fostering the disposal of controversies by arbitration, as exemplified not only by the United States Arbitration Act, cited *supra,* and similar enactments of the other maritime

nations, but also by the decided cases, a decision such as that in the instant case should be corrected by this Court, in order that the lower courts may not hereafter be misled by it; this is particularly true since the decision here sought to be reviewed is principally based upon a misapprehension by the Circuit Court of Appeals of the decision of this Court in *The Atlanten,* cited *supra.*

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, directing that Court to certify and send to this Court, for review and determination, on a day certain to be named therein, a full and complete transcript of the record and proceedings in this cause, which is numbered and entitled on the docket of the Circuit Court of Appeals as "No. 393, October Term, 1939, Louis Louis Dreyfus, Jean Louis Dreyfus, Pierre Louis Dreyfus and Francois Louis Dreyfus, co-partners, doing business under the firm name and style of Louis Dreyfus & Co., Libelants-Appellants, against O/Y Wipu, as owner of the Finnish steamer Wilja, Respondent-Appellee"; that the decree of the United States Circuit Court of Appeals for the Second Circuit in the said case may be reversed by this Honorable Court; and that your petitioner may have such other and further relief in the premises as may seem just.

O/Y WIPU,
By EDGAR R. KRAETZER,
Counsel for Petitioner,
80 Broad Street,
New York, N. Y.

I hereby certify that I have examined the foregoing petition and that, in my opinion, it is well founded and entitled to the favorable consideration of this Court, and that it is not filed for the purpose of delay.

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